

Legislative Bulletin.....December 15, 2005

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H.R. 4437 — Amendments 1-15 to the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005

H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, is scheduled to be considered on the House floor on Thursday, December 15, 2005, subject to a structured rule ([H. Res. 610](#)). The rule makes in order only those amendments printed in the Rules Committee report accompanying the resolution. Below are the summaries of the amendments made in order under the rule. Summaries are based on RSC staff's review of actual amendment text. For a summary of the underlying bill, see a separate RSC document released earlier this morning. NOTE: A separate rule will likely be reported later in the day allowing for additional amendments.

1. Carter (R-TX): Modifies the bill's provision requiring that the Department of Homeland Security (DHS) develop and implement a plan to ensure clear and secure two-way communication to specifically include satellite communications.

2. Gohmert (R-TX): Directs the Inspector General, if improper conduct or wrongdoing is discovered during the DHS IG review of contracts over \$20 million, to refer information related to the improper conduct to the DHS Secretary (or other appropriate official) in order to evaluate whether or not to suspend or debar the contractor.

3. Johnson, Sam (R-TX): Includes a sense of Congress regarding enforcement of immigration laws, stating that the President, Attorney General, Secretary of State, Secretary of Homeland Security and other Department Secretaries should immediately use every tool available to them to enforce the immigration laws of the U.S., as enacted by Congress. The amendment includes additional findings that enumerate the failure to enforce various existing immigration laws.

4. Renzi (R-AZ): Requires that all uniforms for border patrol agents be "manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States." Currently, border patrol agent uniforms are made in Mexico, as reported by ABC and other national media. Click here for a recent ABC article: <http://abcnews.go.com/US/wireStory?id=1349625>.

The amendment's author states that "if the uniforms manufactured in Mexico were to be lost or stolen, or produced surreptitiously in order to undermine our border security efforts, this could have dire consequences for the security of our country."

Thus, the amendment would require that 1) the uniform must be made in the U.S., and 2) the materials and components of the uniform must be "substantially" from within the U.S. This would presumably include, for example, the border patrol patches that are sewn on the sleeves of the uniforms.

5. Castle (R-CA) #16: Requires DHS, in coordination with other federal agencies, to submit a timeline to Congress within one year for 1) equipping all land borders with the US-VISIT entry/exit system; 2) developing and deploying the exit component of the US-VISIT system at all land borders; and 3) making all border screening systems operated by the Department interoperable.

The amendment's author notes that "the 9/11 Commission identified the US-VISIT biometric entry and exit systems as essential to preventing terrorists from entering the country through land borders, airports, and seaports."

6. Gingrey (R-GA): Suspends the visa waiver program until the Secretary of Homeland Security determines and certifies to Congress that—

- "the automated entry-exit control system ...is fully implemented and functional;
- "all United States ports of entry have functional biometric machine readers; and
- "all nonimmigrants, including Border Crossing Card holders, are processed through the automated entry-exit control system."

In addition, the measure repeals section 217(a)(3) of the Immigration and Nationality Act, which states (under the section establishing the Visa Waiver Program),

(3) MACHINE READABLE PASSPORT-

(A) IN GENERAL- Except as provided in subparagraph (B), on or after October 1, 2003, the alien at the time of application for admission is in possession of a valid unexpired machine-readable passport that satisfies the internationally accepted standard for machine readability.

(B) LIMITED WAIVER AUTHORITY- For the period beginning October 1, 2003, and ending September 30, 2007, the Secretary of State may waive the requirement of subparagraph (A) with respect to nationals of a program country (as designated under subsection (c)), if the Secretary of State finds that the program country—

(i) is making progress toward ensuring that passports meeting the requirement of subparagraph (A) are generally available to its nationals; and

(ii) has taken appropriate measures to protect against misuse of passports the country has issued that do not meet the requirement of subparagraph (A).

7. Campbell (R-CA): Amends Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 by replacing "Immigration and Naturalization Service"

with “Department of Homeland Security.” This is a technical correction to current law, as the INS no longer exists.

In addition, the amendment enforces Section 642 by prohibiting the Attorney General from providing to any federal, state or local government agency and entity, that are in violation of this section of law (which states that any government official or entity may not be prohibited from sending information to DHS regarding the citizenship or immigration status of any individual), any grant amount pursuant to any law enforcement grant program carried out by any element of the Department of Justice.

According to the sponsor, “Provisions in both the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 prohibit States and localities from barring their entities and officials from providing immigration information to the Department of Homeland Security (DHS). Yet many cities have sanctuary policies that prohibit law enforcement officers from reporting to DHS any information regarding the immigration or citizenship status of individuals. These policies defy federal law to the endangerment of the public. *It is nonsensical and counterproductive for local law enforcement to be barred from helping DHS enforce immigration laws by simply reporting information discovered during the course of routine police work*”(emphasis in original).

8. Jackson-Lee (D-TX): Authorizes such sums as necessary for DHS to create a **new program**, which directs DHS to fully utilize:

- all available detention facilities operated or contracted by the Department of Homeland Security; and
- all possible options to cost effectively increase available detention capacities, including the use of temporary detention facilities, the use of State and local correctional facilities, private space, and secure alternatives to detention

The program is designed to allow eligible aliens released to the custody of a suitable individual or organizational sponsors who will supervise them, use appropriate safeguards to prevent them from absconding, and ensure that they make required appearances.

The program is to be developed in accordance with the following guidelines:

- “the Secretary is to design the program in consultation with nongovernmental organizations and academic experts in both the immigration and the criminal justice fields. Consideration is to be given to methods that have proven successful in appearance assistance programs, such as the appearance assistance program developed by the Vera Institute and the Department of Homeland Security’s Intensive Supervision Appearance Program;
- “the program is to utilize a continuum of alternatives based on the alien’s need for supervision, including placement of the alien with an individual or organizational sponsor, a supervised group home, or in a supervised, non-penal community setting that has guards stationed along its perimeter; and
- “the Secretary is to enter into contracts with nongovernmental organizations and individuals to implement the secure alternatives to the detention program.”

Program Eligibility: The Secretary is to select aliens to participate in the program from designated groups specified if the Secretary determines that the aliens are not flight risks or dangers to the community. An alien's participation in the program is voluntary and is not to confer any rights or benefits to the alien under the Immigration and Nationality Act. In addition, only aliens who are in expedited removal proceedings may participate in the program.

The following groups may participate in this program:

- Alien parents who are being detained with one or more of their children, and their detained children;
- Aliens who have serious medical or mental health needs;
- Aliens who are mentally retarded or autistic;
- Pregnant women;
- Aliens who are over the age 65;
- Persons placed in expedited removal proceedings after being rescued from trafficking or criminal operations by government authorities; and
- Other groups designated in regulations promulgated by the Secretary.

The amendment states that the decision of the Secretary regarding when to utilize the program and to what extent and the selection of aliens to participate in the program is *not* to be subject to administrative or judicial review.

The amendment directs the Secretary to submit to Congress “a report that details all policies, regulations, and actions taken to comply with the provisions in this section, including maximizing detention capacity and increasing the cost-effectiveness of detention by implementing the secure alternatives to detention program, and a description of efforts taken to ensure that all aliens in expedited removal proceedings are residing under conditions that are safe, secure, and healthy.”

According to the sponsor, “In a ‘secure alternative program’ eligible aliens are released to the custody of suitable individual or organizational sponsors who will supervise them, prevent them from absconding, and ensure required appearances. Decisions on eligibility for participation are made on case-by-case determination by DHS with no judicial review. The various options for secure alternatives include placement with sponsor, group home, or supervised environment with adequate security.”

9. Castle (R-DE): Directs the Secretary of DHS to submit to Congress a report on:

- the number of illegal aliens from noncontiguous countries who are apprehended at or between ports of entry since the date of enactment of this Act;
- the number of such aliens who have been deported since the date of enactment of this Act; and
- the number of such aliens from countries the governments of which the Secretary of State has determined are governments that have repeatedly provided support for acts of international terrorism.

The amendment also expresses that it is the sense of Congress that the Secretary of DHS should develop a strategy for entering into appropriate security screening watch lists the appropriate background information of illegal aliens from countries sponsoring terrorism into appropriate security screening watch lists.

According to the sponsor, “As part of this effort [the effort to enhance border security procedures], it is imperative that we closely monitor trends in the number of immigrants from noncontiguous nations who enter our country illegally

10. Brown-Waite (R-FL): Inserts a new section stating “Congress condemns rapes by smugglers along the international land border of the United States and urges in the strongest possible terms the Government of Mexico to work in coordination with United States Customs and Border Protection of the Department of Homeland Security take immediate action to prevent such rapes from occurring.”

According to the sponsor, “[She] felt compelled to add this provision due to the increasing news stories of women being raped as they seek entry in the United States, especially from Mexico.”

11. Hunter (R-CA) / Dreier (R-CA) / Royce (R-XX) / Goode (R-XX) / Gingrey (R-GA): States congressional findings that hundreds of people die crossing the Mexico border annually, over 155,000 non-Mexican individuals were apprehended trying to enter the U.S. along the Southwest border in FY05, and the number of illegal entrants into the U.S. through the Southwest border is estimated to exceed one million annually.

The amendment directs DHS to provide at least two layers of reinforced fencing, and for the installation of additional physical barriers, roads, lighting, cameras and sensors extending along specific sections of the California, Arizona, New Mexico, and Texas borders, comprised of at least 50 miles of barriers and related equipment; requires that an interlocking surveillance camera system is installed in the areas defined above by May 30, 2006, and that fence construction is completed by May 30, 2007, and that a certain portion of the fence along the Laredo, Texas border be completed by December 31, 2006; allows for an exception to building the fence if the elevation exceeds 10 percent in certain areas.

Directs the DHS to conduct a study on the construction of a state-of-the-art barrier system along the Northern international border, and report to Congress within one year; includes a sense of Congress that the DHS Secretary will take “all necessary steps to secure the Southwest international border for the purpose of saving lives, stopping illegal drug trafficking, and halting the flow of illegal entrants into the U.S.”

12. DeFazio (D-OR) / Lungren (R-CA): Directs the DHS to create a new pilot program to evaluate the use of automated systems for the immediate prescreening of passengers on flights in foreign air transportation; defines specific requirements of the prescreening system, including the ability to compare a passenger’s information against the terrorist watchlist and provide the results before the passenger is permitted to board the flight; requires the pilot program to be conducted in at least two foreign airports and in collaboration with at least one

air carrier; requires DHS to evaluate not more than three systems; requires that the pilot program be conducted for at least 90 days, and directs DHS to submit a report to Congress on the program and various components of it upon completion.

13. Hayworth (R-AZ): Eliminates the 4th preference family visa category (which currently allows up to 65,000 visas per year) and increases the number of employment-based immigrant visas by 65,000 (from 140,000 per fiscal year to 205,000). Under current law, U.S. citizens who are at least 21-years old can apply to bring their siblings to live permanently in the U.S. (For more information see: <http://uscis.gov/graphics/howdoi/sibling.htm>). While the sponsor's summary implies his amendment only eliminates adult siblings, the actual text of the amendment eliminates all sibling visas (which are available for siblings of any age). The effect of the amendment on the current sibling visa provision is shown in red bold:

8 U.S.C. 203(a)(4)

Sec. 1153. Allocation of immigrant visas

~~(4) Brothers and sisters of citizens~~

~~Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000, plus any visas not required for the classes specified in paragraphs (1) through (3).~~

According to the sponsor, "If the U.S. economy needs more workers, we should admit more legal immigrant workers. More than 70% of our green cards each year go to family members of previous immigrants. We should reprioritize our immigration system to attract more worker-immigrants. My amendment would do that by eliminating Adult Siblings visas. The numerical allocation for these visas would be shifted to employment-based permanent visas."

14. Goodlatte (R-VA)/Herseth (D-SD): Eliminates the visa lottery program, as of October 1, 2006 (the first day of fiscal year 2007). Each year, the State Department's National Visa Center holds a lottery to allot 50,000 immigrant visas to winners randomly chosen. These immigrants come from countries with low rates of immigration to the United States (less than 50,000 immigrants to the U.S. in the last five years). Anyone selected under this lottery is given the opportunity to apply for permanent residence, which if granted, allows him or her to live and work permanently in the U.S., and bring a spouse and any unmarried children under the age of 21 to the U.S. (For more information see: <http://uscis.gov/graphics/howdoi/divlott.htm>.)

According to one of the amendment's sponsors, the State Department's Inspector General testified before Congress this year that the Office of Inspector General continues to believe that the program "contains significant risks to national security from hostile intelligence officers, criminals, and terrorists attempting to use the program for entry into the United States as permanent residents."

15. Filner (D-CA): Amends U.S. Code to ensure that people who distribute or intend to distribute counterfeit immigration documents, also face the same criminal penalties as people who falsify, forge, or produce counterfeit immigration documents. The changes to current law made by the Filner amendment are shown in red bold below

18 U.S.C. 1546

Sec. 1546. Fraud and misuse of visas, permits, and other documents

- (a) Whoever knowingly forges, counterfeits, alters, or **distributes (or intends to distribute)**, falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or **distributed**, falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; ...

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both. ...

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